

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

**No. CV 16-0343 MV/LAM
CR 12-0969 MV**

RICHARD E. LUNA,

Defendant/Movant.

ORDER TO SUBMIT PRESENTENCE REPORT

THIS MATTER is before the Court *sua sponte* and upon the submission on March 23, 2017, of a “Second Memorandum” by the United States Probation Office. [Doc. 19]. In the ***Proposed Findings and Recommended Disposition*** (Doc. 16) (“PF&RD”), entered in this case on February 14, 2017, the Court relied upon the parties’ statements in their briefing on Defendant/Movant’s (“Defendant’s”) § 2255 motion that Defendant was subject to the Armed Career Criminal Act (“ACCA”) based on two prior convictions for residential burglary, and one prior conviction for commercial burglary. *See* [Doc. 16 at 2] (relying on Doc. 4 at 2 and Doc. 8 at 2). The Court noted:

While both parties cite to Defendant’s Presentence Report (“PSR”), the PSR has not been filed in either Defendant’s civil or criminal cases, and neither party has provided the Court with a copy of the PSR. Nevertheless, since the parties do not dispute the information in the PSR, the Court will rely on the parties’ statements in their briefs regarding the content of the PSR.

Id. at 2, n.3. In the Probation Office's Second Memorandum, filed in this case on March 23, 2017, the probation officer states that, based on the PF&RD, "the defendant's case was re-reviewed," and "defendant has a total of five Residential Burglary convictions . . . each which occurred on occasions different from one another and that qualify as violent felonies." [Doc. 19 at 1]. The probation officer, therefore, states that Defendant is an armed career criminal subject to an enhanced sentence under the ACCA. *Id.*

Because the Second Memorandum appears to be at odds with the parties' statements in their briefs regarding Defendant's § 2255 motion, the Court will require, **within ten (10) days of entry of this Order** that Defendant, through counsel, either file under seal the original Presentence Report relied on in support of his § 2255 motion, and any addenda, or e-mail it to lmproposedtext@nmcourt.fed.us.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE